

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ADAM GRAY,)	
)	
Plaintiff,)	Case No. 18-CV-2624
)	
v.)	Judge Edmond Chang
)	
CITY OF CHICAGO, et al.,)	
)	
Defendants)	
)	

**INDIVIDUAL CITY DEFENDANTS' POSITION STATEMENT
IN SUPPORT OF ADMITTING DEFENSE EXHIBIT NO. 1**

Defendants Daniel McNerny, Percy Davis, and Geri Lynn Yanow as Special Representative for the Estates of Nicholas Crescenzo Jr., Michael Pochordo, Ernest Rokosik, George Jenkins, and Joseph Gruszka ("Individual City Defendants"), by and through their undersigned counsel, hereby submit their position statement regarding the admission of Defense Exhibit No. 1, and state as follows:

Individual City Defendants seek to admit into evidence an incident report from the Chicago Fire Department's Office of Fire Investigation ("OFI Report") listed as Exhibit No. 1 on Defendants' Trial Exhibits List. The OFI Report, dated March 25, 1993, was drafted by deceased Defendant Fire Marshal Joseph Gruszka who was tasked with investigating the cause and origin of the fire at 4139 S. Albany. In this report, Gruszka details his physical observations of the fire scene; information regarding victims of the fire; the area of origin of the fire; the damage the fire caused; and the fuel and heat source of the fire. The OFI Report also contains summaries of interviews with witnesses Karrie Kelly and Barbara Paris. In this report, Gruszka ultimately concluded, "after a thorough fire scene examination and the elimination of all possible accidental or natural cause factors, this fire is determined as incendiary. It is my further opinion that the

perpetrators utilized a flammable/combustible liquid accelerant to enhance the rapid spread of this fire, and also utilized a hand-held open flame as an ignition source.” OFI Report, attached hereto as Ex. 1.¹ Gruszka also recommended that the Chicago Police Department’s (“CPD”) Bomb and Arson section continue with the fire investigation.

During Plaintiff Adam Gray’s criminal trial, on April 24, 1996, Gruszka identified the OFI Report and testified that it was his report pursuant to his investigation of the fire at 4139 S. Albany. *See* Trial Transcript Dated April 24, 1996, attached hereto as Ex. 2, at p. J35-J36. In the CPD Supplementary Report dated March 28, 1993, listed as Defendants’ Exhibit No. 3, deceased Defendant Crescenzo summarizes Gruszka’s fire cause and origin findings as detailed in the OFI Report. *See* CPD Supplementary Report Dated March 28, 1993, attached hereto as Ex. 3.

The OFI Report should be admitted as Individual City Defendants can lay proper foundation that the report was drafted by Defendant Gruszka and dated March 25, 1993. Further, Gruszka has testified about his OFI Report, and Defendant Crescenzo made reference to Gruszka’s findings in a CPD report dated three days after the date of the OFI Report. Individual City Defendants’ expert Edward Nordskog also relied on the OFI Report to render his expert opinions regarding the fire investigation conducted by Defendants Gruszka, Rokosik, Jenkins, and McNerny. In the event the OFI Report is not admitted, Individual City Defendants seek to use the report on cross examination of Plaintiff’s experts John Lentini and Denny Smith who claim that Defendants Gruszka, Rokosik, Jenkins, and McNerny failed to exclude other potential sources of the fire. As Gruszka details in the OFI Report the other potential sources of the fire that he eliminated during his investigation, it is crucial this report is allowed to rebut Plaintiff’s experts. Thus, Defense Exhibit No. 1 should be allowed.

¹ Attached as Exhibit 1 is a clearer copy of the OFI Report drafted by Defendant Gruszka than the version submitted to the Court prior to the pretrial conference.

WHEREFORE, Individual City Defendants respectfully request that this Court admit
Defense Exhibit No. 1.

Dated: April 24, 2023

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Natalie Adeeyo, an attorney, hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent electronic notification of the filing on the same day to all counsel of record.

/s/ Natalie Adeeyo